GOVERNMENT OF MYSORE.

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT (LABOUR).

Labour Dispute.—Industrial Dispute between the Workmen and the Management of Guest, Keen, Williams, Sankey Division, Bangalore.

Award of the Additional Industrial Tribunal, Bangalore—Published.

Read the following papers :—

(1) Letter No. A.I.T No. 722-33/67-68, dated 25th November 1967 from Shri V. C. Ramachandrarao, Presiding Officer, Additional Industrial Tribunal, Bangalore.

BEFORE THE ADDITIONAL INDUSTRIAL TRIBUNAL, IN MYSORE, BANGALORE.

Dated this 24th November 1967.

Present :

Sri V. C. Ramachandran, B.SC., (A. I.C.S.), Bar-at-Law,
... Presiding Officer.

A.I.D. No. 27 of 1966

I.D. No. 167 of 1966.

I Party.	*vs.*	*II Party.*
The Workmen of Guest, Keen, Williams, Ltd., Sankey Division, Bangalore.		The Management of Guest, Keen, Williams, Ltd, Sankey Division, , Bangalore.

Appearances.

For the I Party.—Sri M. C. Narasimhan, Advocate, Bangalore.

For the II Party—Sri V. L Narasimha Murthy, Advocate, Bangalore.

ORDER.

Government Order No. LMA 471 LLD 66, Bangalore, dated 28th October 1966.

AWARD.

This is a Reference made by the Government of Mysore by their Order No. LMA 471, LLD 66, dated 28th October 1966 under Section 10 (1) (d) of the Industrial Disputes Act, 1947 of an industrial dispute between the workmen and the management of the Guest, Keen Williams Ltd., Sankey Division, Bangalore, for adjudication by the Industrial Tribunal, Bangalore. Subsequently the Reference was transferred to this Tribunal by Government Order No. LMA 595 LLD 66 dated 29th November 1966. It was taken on file and registered as A. I. D. No. 27 of 1966. There are only two points of dispute referred to this Tribunal and they are as follows :—

"1. Are the workmen of Guest, Keen, Williams Ltd., Sankey Division, Bangalore, justified in demanding payment of D. A. at the rate of 25 Paise per point of rise over the consumer price index with effect from 8th February 1966?

If not, to what relief are the workmen entitled to and from what date?

2. Is the management of Guest, Keen, Williams, Ltd., Sankey Division, Bangalore. justified in dismissing the services of Sriyuths: Samuel and K. Venkatesha Murthy?

If not, to what relief are the workmen entitled to?

2. The workmen of the Guest, Keen, Williams Ltd., Sankey Division, Bangalore, who will be hereafter referred to as I Party had entered into an Agreement on 9th December 1964 which covered various matters. It provided *inter alia* dearness allowance to be paid to the I Party on a slab basis i.e. Rs. 65 to those earning below Rs. 50/-, Rs. 71/- to those earning from Rs. 50 to Rs. 150/- and Rs. 76/- to those earning above Rs. 150. It was also agreed between the Parties that the Dearness Allowance is liable to be revised after a period of 12 months, at the instance of either of the Parties. The I Party has sought for revision of Dearness Allowance rates after the expiry of 12 months from the date of the agreement in view of the fact that the prices of various commodities have been rising sharply and they requested for payment of Dearness Allowance at Rs. 0-25P per point of rise in the cost of living index in Bangalore from the date of demand

which was on 8th February 1966. In spite of various attempts, the rivision of Dearness Allowance was not made by the Management and the matter went up before the Conciliation Officer. As conciliation talks failed, it was referred to the Industrial Tribunal for adjudication and that is how the matter has come up now.

3. The case of the I Party is that the II Party is a very flourishing concern, its capital being about Rs. 632.18 lakhs, the reserves Rs. 702.60 lakhs and the turnover amounted to Rs. 2346.37 lakhs. The Company has been making enormous profits and has been quite properous and therefore, is in a capacity to meet the demands of the I Party. The lowest emoluments would come to about Rs. 101 and it has remained static eversince December 1964 although the Consumer Price Index numbers have risen sharply and while it was 594.14 in January 1965, it rose to 743.70 in September 1966. In other words, the Consumer Price Index figures have risen nearly by 150 points and as a result of this, the real wages of the workmen have declined very sharply. There is therefore, a *prima facie* case for immediate revision of the Dearness Allowance. The I Party prays that the Dearness Allowance may be linked to the Consumer Price Index Numbers so that it will bridge the yawning gulf between the existing wage leavel and the need based wage. They pray for fixation of Dearness Allowance calulated at the rate of Rs.0-25p per point of increase over 100 in the comsumer price index numbers. The I Party workmen also pray for reinstatement of two workers *viz,* Samuel and K. Venkatesha Murthy who have been dismissed from service. Samuel was employed as a canteen boy by the II Party in the year 1959 and has put in 7 years of service. A charge sheet was issued to him on 30th March 1966 alleging that he was guilty of playing cards game in combination with others on the Factory premises during working hours and wilful absence from the place of work in order to play cards with others. An enquiry was held and he was found guilty and subsequently, he was dismissed. The case of the I Party is that dismissal of Samuel is illegal, *mala fide* and is liable to be set aside for the following reasons. Firstly that the Enquiry is opposed to the principles of natural justice, secondly on the ground of victimisation, thirdly the finding is perverse, fourthly that the punishment is discriminatory and lastly it is based on extraneous considerations. It is prayed that he may be reinstated with back wages and continuity of service and consequential benefits.

4. Sri K.S Venkatesha Murthy joined as an operator and has put in 6 years of service. He was removed from service by a letter dated 21st June 1965 as he was absent for ten days without any intimation. Venkatesha Murthy was under Medical treatment during that period and the termination is arbitrary, illegal and is a colourable exercise of the power which has been resorted to by way of victimisation. Hence it is prayed that he be reinstated with continuity of service and back wages and other benefits.

5. The Company, which would be referred to hereafter as the II Party, contends that the Reference is vague and that it is premature as the very same matter is pending before the Engineering Wage Board whose interim recommendations have been given effect to by the II Party. The Company further contends that the agreement entered into by the I Party with them that they will abide by the recommendations of the Wage Board makes it incumbent on this Tribunal to adjourn the Reference *sine die* until the wage Board's final recommendations have been accepted for implementation by the Government.

6. The negotiations between the Parties were only in respect of the quantum of adhoc allowance to be granted to the workmen and they could not arrive at a settlement. In the meantime, the Engineering Wage Board had recommended certain interim relief from 1st April 1966 and those recommendations have been implemented by the II Party. Hence there is no case according to the II Party for adjudication of the dispute with regard to the Dearness Allowance.

7. The II Party further contends that no case is made out for the revision of the Dearness Allowance. It will make submissions regarding its financial position, if necessary, at the time of the hearing of the Reference. They state that their activities have been seriously affected by power cuts in the region and the acute shortage of raw materials with regard to which they will produce the relevant data at the time of hearing of the Reference. They submit that the existing scheme of Dearness Allowance is fair and reasonable when compared with the scheme existing in several concerns in the region They state that no case has been made out for linking the Dearness Allowance with the cost of living index They further state that the prayer for fixing the Dearness Allowance at Re. 0-25 Paise per point of increase over 100 in the C.P.I. is outside and beyond the scope of Reference. They are not entitled to any retrospective effect as the settlement was only on

9th December 1964 and the Interim recommendations of the Wage Board were given effect to from 1st April 1966.

8. The II Party state that Samuel was dismissed after a fair and proper enquiry at which all principles of natural justice have been observed and the Association's demand for reinstatement of Samuel is unreasonable and ought to be rejected He had collected his dues in ful and final settlement on 11th April 1966 and it is not open to him to dispute his dismissal. The II Party denies that the Enquiry is opposed to the principles of natural justice and for want of good faith or that he is victimised or that the findings of the Enquiry Officer is perverse and that the punishment is discriminatory. The charges having been proved against Samuel, the question of reinstating him with back wages or continuity of service with consequential benefits does not arise.

9. The II Party did not get any information regarding reasons for absence of K. V. Murthy in spite of the fact that a Show Cause Notice was sent to him on 16th June 1966. As no communication was received by the Management even after a period of 12 days, the Management removed his name from the Muster roll as it appeared that he was not interested in working under the II Party. Venkatesh Murthy came to the Factory on 29th June 1966 with E.S.I. Certificate covering the period of his absence. His attitude in not intimating the Management about his illness betrays callous indifference towards his employer and hence the Company is justified in removing his name from muster roll, as he had voluntarily abandoned his service. The Company, therefore, prays that the demand for reinstatement of Venkatesh Murthy may be rejected.

10. The following Issues were framed in addition to the points of dispute scheduled in the Order of Reference :—

"I. "Whether by virtue of settlement dated 9th December 1964 and the I Party having had the benefit of the Interim Relief recommended by the Wage Board for the Engineering Industry, this Reference by the Mysore Government is premature and should await the final recommendations of the said Wage Board ?

II. Whether the existing Scheme of D. A. is fair and reasonable and comparable with that existing in several comparable concerns in the regions ?

III. Does the I Party make out a case for revision of Dearness Allowance for the reasons alleged by it ?

IV. Whether the settlement dated 9th December 1964 is binding and is to remain in force up to 31st December 1967 and I Party is precluded from seeking revision of Dearness Allowance now ?

V. Whether Dearness Allowance should be fixed at the rate of 25 paise per point of increase over 100 in the Consumer Price Index and, if not, at what rate and from what date. Whether that is within the scope of the Reference ?

VI. Whether the dismissal of Samuel was unfair, and the inquiry held was opposed to the principles of Natural Justice and if so, to what relief is he entitled ?

VII. Whether the Company was justified in removing the name of Murthy from the muster roll in the circumstances stated by II Party and if not, to what relief is he entitled ?

VIII. Whether the dismissal of the two employees was *mala fide* unwarranted and due to victimisation and unfair labour practice.

11. Before taking up the main points of controversy between the Parties, certain preliminary objections which have been taken by the II Party with regard to the Reference made by the Government may be disposed of. The Company raised three points with regard to the Reference. Firstly that it is vague so far as the Dearness Allowance matter is concerned, secondly that the final pattern of Dearness Allowance must await the recommendations of the Engineering Wage board which has been specifically constituted to go into that matter and thirdly, that the settlement entered into by the workmen with the management precludes the agitation for the demand of Dearness Allowance made by the I Party. In my view none of these contentions have any force' The dispute referred to this Tribunal does not make it clear as to what is the base year for the purpose of calculating the rise in the consumer price index but the parties seem to have understood that the calculation should be from the base at 100 as the consumer price index number. In other words, the I party contends that they are entitled to 25 paise per point of rise over the consumer

price index above 100 with effect from 8th February 1966. It seems to me, however, that the Dearnese Allowance was fixed at a flat rate by virtue of Settlement dated 9th December 1964 and the revision sought for is any changed circumstances which might arise subsequent to the date of Agreement *i. e.* 9th December 1964. It would not be proper for the I Party to go back to the conditions prevailing prior to Settlement of 9th December 1964 and the revision of the Dearness Allowance can only be asked for taking into consideration any changed circumstances which might have taken place after 9th December 1964. It seems to me, therefore, that the basis must be taken as on 9th December 1964 and the I Party would be entitled to increase in Dearness Allowance only in respect of the rise in the consumer price index numbers from 9th December 1964 as otherwise, it would be re-opening the matters which have been covered by the Memorandum of Settlement. Although the first part of the Reference is not quite clear the corollary of it *viz.* if not, what relief the workmen are entitled to and from what date, gives this Tribunal ample jurisdiction to decide the question of Dearness Allowance to the workmen both with regard to its quantum and also from what date they are entitled to. In as much as the Agreement between the Parties have permitted either of the parties to seek revision of the Dearness Allowance payable to the I Party after the expiry of 12 months from the date of the Agreement, the I Party Members are certainly entitled to demand revision of Dearness Allowance and there is no bar to the demand either in the agreement or by virtue of Constitution of the Engineering Wage Board. Hence in my view, there is no force in any of the preliminary objections raised by the II Party.

12. The second question that arise for consideration is whether the I Party workmen are entitled to the revision of Dearness Allowance. The Dearness Allowance was settled under the Settlement dated 9th December 1964, according to which, under Clause 16, the Company have agreed with effect from 1st December 1964, the dearness allowance would be paid to all its workmen at the following rates;—

(i) Those earning below Rs. 50	Rs. 65 P. M.
(ii) Those earning from Rs. 50 and below Rs. 150	Rs. 71 P. M.
(iii) Those earning Rs. 150 and above	Rs. 76 P. M.

This Dearness Allowance Scheme had to be in force for a period of 12 months from the date of the Agreement *i. e.* from 9th December 1964. Under Clause 18 of the Agreement, either party is at liberty to seek revision of the Dearness Allowance rates after 12 months and if no such revision is sought by either party the Dearness Allowance will continue to be in operation for a period of three years. The period referred to in Agreement has expired on 9th December 1965. The demand for revision of D.A. was made by the I Party in February 1966. Hence the demand is covered by the Agreement. Article 10 of the Agreement specifically states that the Agreement has to be in force from 8th December 1967 except for the Dearness Allowance for which separate provision has already been made. So the Agreement does not bar the demand for Dearness Allowance after the expiry of 12 months from the date of the Agreement. The Agreement further states that when the final recommendations of the Wage Board are made known and if the totality of the service conditions are equal or more than those recommended by the Wage Board, the Company shall not be called upon to make any revision in terms of the Wage Board recommendations, but if on the other hand, the totality of service conditions as recommended by the Wage Board are more than those under this Agreement, then the recommendations will be implemented only to the extent of such excess. What it means is that the service conditions are liable to be altered if the Wage Board's recommendations are more favourable than those of the Agreement and if less favourable, the service conditions of the Agreement will be binding on the parties. That does not however, bar the revision of Dearness Allowance till the final recommendations of the Wage Board are made known. Under the circumstances, it seems to me that the Dearness Allowance is liable to be revised.

13. The revision of the Dearness Allowance in my view, can only be for the purpose of neutralising the rise in the cost of living since the date of Agreement *viz.* 9th December 1964. In other words, the revision must be with reference to increase in the Consumer Price Index figures from that which existed on 9th December 1964 to that which prevails at present. There is no doubt that the Consumer price index has increased considerably during the last two years, while it was 547.74 in December 1964, it had gone up to 740 in May 1967 and the consumer price index for June 1967 is 772. Hence there are nearly 200 points increase during the course of last three years. The object of Dearness

Allowance is to neutralise the rise in cost of living and to enable by the expediency of Dearness Allowance the restoration of the same value to the basic salary as it originally had. It is not as if the wage is sought to be raised by increase in the Dearness Allowance but it is only to keep the wages at the same level and not become subject to fluctuations due to increase in price of various commodities. One of the ways adopted by the very many industries is to link the Dearness Allowance to the cost of living index so that the Dearness Allowance will rise or fall as the consumer price indexesg ou or down. That principle has been well recognised not only by the Industries but also by the Supreme Court which approves of that expedency to neutralise the rise in the cost of living. The Supreme Court makes the following observation with regard to the Dearness Allowance;

> "It is in our opinion proper and desirable that the dearness allowance should not remain in fix but should be on sliding scale as was pointed out in Workmen of Hindustan Motors-*vs*-the Management of Hindustan Motors (1962 II LLJ 352), The whole purpose of Dearness Allowance is to neutralise the variation and increase in the cost of living ordinarily be on sliding scale and provide for an increase and rise in the cost of living and decrease on the fall of cost of living. On consideration of the circumstances in this case, we direct that a sliding scale be attached to the Dearness Allowance as Rs 25/-per month as awarded by the Tribunal on the lines which has to be increased or decreased on the basis of one rupee for every ten points or rise and fall in the cost of living on the basis of 400 1939, indexbe taken as 100 as sliding scale with effect from 1st April 1959."

14. As stated before, the cost of living has enormously increased from December 1964 as is evident from the C. P. I. figures The C P. I. Numbers for December 1964 as from 400 to 547 and the C. P. I. Numbers for July 1967 was 772 points. Taking the average for the year 1967, the consumer price index would be 726 and the rise in C. P. I Numbers from December 1964 would be about 150. This rise has to be neutralised and the Dearness Allowance of the employees of the II Party must be increased in order to effect that neutralisation. That is possible only if the Company is in a financial position to meet the demand of the workmen.

15. The learned Counsel appearing for the management contended that it is for the 1 Party to prove the financial capacity of the II Party to meet the demand and no such Proof having been given, the I Party has not made out its case for revision of Dearness Allowance. I cannot however, accept that mode of approach. The financial capacity or incapacity of the Company is a matter which is in exclusive knowledge of the II Party and it is for them to show that they are incapable of meeting this lawful demand of the I party. On the contrary, the II party even prevented the I party of placing on record the balance sheet of the II party. Even if that argument had to prevail, the II party has never during the course of pleadings, denied their financial capacity to meet the demands of the I party. The I party categorically stated in their claim statement that the II party is a monopoly concern having several branches all over India with a capital of 632 lakhs, reserves 702 lakhs and a turnover of Rs. 2, 846 lakhs and it has capacity to meet the demands of the I party and this cannot be seriously disputed. In answer the II party has not cared to deny any of the facts mentioned and contended itself observing that if necessary it will make its submissions on the financial position at the time of hearing of the Reference. It may be stated here that no such submissions have been made at the time of hearing of the Reference. The II party further stated that the activities of the Bangalore Establishment have been seriously affected by the power cuts in the region and acute shortage of raw materials, but even with regard to them no materials have been placed before the Court. On the contrary. the evidence is that the Company has been flourishing and has been continuously making profits and has even paid profit sharing bouns for the year 1966. There is, therefore, ample evidence to justify the conclusion that the Company is in a financial position to meet the demand of the I party with regard to the revision of the Dearness Allowance. As stated before the revision can only be for the changed circumstances from the date of the Agreement *viz.* 9th December 1964 and the neutralisation must be in respect of the rise in the cost of living from 9 December 1964. In other words, the rise of 150 points of the consumer price index requires increase in the Dearness Allowance.

16. The learned Counsel for the Management contended that mere increase in the consumer price index number and the capacity of the industry to pay are not the only criteria for according increase in the Dearness Allowance, but two other factors must also betaken into consideration *viz.* the prevailing scheme of Dearness Allowance in comparable industries within the region

and also what he calls the total wage packet of the worker. His argument is that even conceding that there is an increase in the consumer price index number and the industry has capacity to pay the total wage packet of the worker in the II party concern is more than the workers in comparable industries and the Dearness Allowance paid to the workers is more favourable than that obtaining in other industries. In my view, the increase in Dearness Allowance does not amount to revision of wage structure because the increase in Dearness Allowance is to keep the wages at the same rate as before, the increase being necessitated by the rise in the cost of living. In that view, it seems to me that it is not a matter of great consequence as to what is the dearness allowance prevailing in other industries as wages are not sought to be increased. Even assuming for a moment that it would be incumbent on this Tribunal to go into the prevailing schemes in other Industries, I am not convinced that the II party is paying as much Dearness Allowance as is being paid in similar industries. The workers have let in evidence of various industries which have a scheme of Dearness Allowance. The II party industry is an Engineering Industry and it deals with the making of motor stampings or laminations, meter covers, bases, transformer laminations and choke laminations and mico filter covers. The industry which is similar producing although not exactly the very same Product, is Mico Industry in Bangalore which probably has not got the same Capital nor the same resources as the II Party-Industry. They pay Dearness Allowance for every ten points above 455 Rs. 2 to the Staff and Rs. 2-60P. to the workers. The Indian Oxygen Ltd., pays a Dearness Allowance of nearly Rs. 145 a month to the lowest paid worker, but that cannot be a comparable concern as it is a chemical industry and not an Engineering Industry. Fritz Werner and Co., Penia, is an Engineering concern employing about the same number of workers as the II Party and they pay a Dearness Allowance ranging from Rs. 47 to Rs. 120 and on top of that they give free lunch to the workers which costs between Re. 1 to Rs. 1-20 per day. The Amco Batteries (P) Ltd. pays a Dearness Allowance of Rs. 127-60 but that is not an Engineering concern. Another comparable concern is stumps Somappa (P) Ltd. and they pay Rs. 2 for every ten points rise above 500 points which is adjustable once in six months. The Management adduced the evidence of the Mysore Electrical Industries and NGEF WHO no doubt give lesser amount of Dearness Allowance. It must also be noticed that the basic pay of a worker of the II Party concern is much lower than any of the other industries. The stumps Somappa and Co., pay

Rs. 90 as basic salary while Fritz Werner and Co., pay Rs. 70 and N.G E.F. and I.T I pay Rs. 70 and the II Party pays only Rs. 33 forthe unskilled worker. It was argued that the II Party pays incentive Pr duction Bonus and has already implemented interim relief recommended by the Engineering Wage Board. The relief that they have obtained out of the recommendations of the Engineering Wage Board has necessarily to be deducted from any increase in the Dearness allowance that may be granted. In my view, considering the unique position that this industry occupies and rich resources, which it is said to possess and the rates of Dearness Allowance in other comparable industries like Mico and Stumps Somappa and Co., where the Dearness Allowance is linked to the cost of living, the dearness allowance may be revised keeping the rate in the agreement at the consumer price index number at 600 points and giving an increase of Rs. 2 for every ten points, the neutralisation be 90 per cent for a salary below Rs 100 45 per cent from Rs. 100 to Rs. 200 and 22½ % over Rs. 200 In other words, for the difference of 126 points which is the difference in the consumer price index between the average consumer price in ix numbers of 1967 and the end of December 1964. for those getting less than Rs. 100, it will work out to Rs. 22-68P and from that the Interim Relief benefit of Rs. 12.20P has to be deducted leaving Rs. 10 as the increase in the Dearness Allowance, for those whose pay is below Rs. 100. .For those between Rs. 100 to Rs. 200 the increase of Dearness Allowance will work out to Rs. 4 and for those above Rs. 200 there will be no increase.

17. The next dispute is with regard to the dismissal of workmen, Samuel and T. Venkatesh Murthy. So far as Samuel is concerned, an Enquiry was held and the Enquiry Officer found him guilty of two charges playing of Cards in combination with others in Factory Premises during working hours and secondly wilfully absenting himself from his normal place of work in order to play cards with others. It would be noticed that the gravamen of these two charges is that Samuel was playing cards during those working hours. The learned Counsel for the Union argued that there is no evidence that Samuel was playing cards and that the enquiry conducted against him was opposed to all principles of natural justice. The findings of the Enquiry Officer is liable to be set aside on four main grounds. Firstly that it is perverse and no reasonable person would reach the conclusion to which the enquiry officer arrived at, Secondly that the Enquiry is opposed to the principles of natural justice, thirdly that it is not in conformity with the Standing Orders and lastly that the dismissal was the result of some ulterior motive in order to victimise the delinquent.

In the instant case, the ground which has greatest force is that the enqniry was not conducted in accordance with the principles of natural justice. It would be noticed from the enquiry proceedings that the Enquiry Officer relied upon statement made by the watchman, Krishnappa, Supervisor Swamy, Timekeeper, Sivaprakash and Kuppuswamy, and copies of those statements have not been furnished to the delinquent nor have they been examined before the delinquent with an opportunity of cross examination. The Enquiry Officer first started to cross examine the delinquent without letting in any evidence whatsoever. He even went to the extent of asking the delinquent why he should not admit the offence with which he was charged. It is only when the delinquent refused to admit the charges that Swamy and Sivapraksh were asked to be brought in not for the purpose of examining those two witnesses but merely to put a question as to whether it is true that they saw Samuel playing cards. The following dialogue between the Prosecuting Officer and the witness is the only evidence that Samuel was playing cards. Mr. Kapoor questioned Mr. Swamy, "you have stated that you observed Mr. Samuel sitting in the pump house with cards in his hands Is that right?" Mr. Swamyre plied, "Quite right." It is not known where Mr. Swamy stated that he observed Samuel sitting in the Pump House with cards in his hands. The proper procedure is to ask Swamy what he saw in the Pump House. Shivaprakash no doubt said that he saw 3 persons playing cards and Samuel had cards in his hands, but while Kapoor asked Samuel to cross examine Swamy such opportunity seems to have been given for cross examining Sivaprakash. The important witness, Krishnappa has not been examined before the Enquiry Officer and we do not know what his statement is. The Enquiry Officer also enquired the charges against the two other persons said to have been playing cards with Samuel and those two persons categorically say that Samuel had not played cards at all and he does not know how to play cards. Although the statement of co-accused is no evidence against the accused, if the co-accused makes on inculpatory statement against himself and an exculpatory statement against the co accused, that statement is entitled to great weight because no person will admit his guilt and declare that another person is innocent unless it is a true state of affairs. The Enquiry Officer himself seems to be not quite sure whether Samuel was playing cards at all because his findings are as follows:—

> "I have no hesitation to conclue that the charges against Doreswamy and Krishnan of playing cards in a concealed place for one hour and 45 minutes and also

the charge againts Sri Samuel who was present there with them for 40 to 45 minutes are fully substantiated."

So the charge against Samuel that he was playing cards has not been made out before the Enquiry Officer who found him guilty only being present along with others who were playing cards for 40 to 45 minutes. The charge is not that he was present there, but he was playing cards and since the charge has not been established, the offence could not be said to have been brought home to the delinquent. The Manager in his order of dismissal has added some thing more which was not the basis of the charge nor the basis of the enquiry against Samuel *viz.*, that Samuel went to a concealed place where he could only be found by sheer chance and participated in the card game in the combination of other workers. The Model Standing Orders which applies to this industry makes it a misconduct entailing dismissal if the workman did any act subversive to discipline. It can certainly be said that playing cards during working hours is an act subversive of discipline but mere absence from the place of work, while taking rest elsewhere due to indisposition, will not in my view amount to an act subversive of discipline. In any case, the management proceeded to dismiss him on the charge of his having participated in a game of cards but as stated before, there is no evidence to substantiate that charge nor is there any finding that he was participating in the game of cards. The Enquiry is, therefore, vitiated as a result of failure to follow the principles of natural justice. The order of dismissal must therefore, be set aside.

18. With regard to Venkatesh Murthy, the case of the Management is even worse. No enquiry has been held against him nor is there any charge-sheet given to him. He was dismissed on the ground of not reporting himself for duty, but it is the management who have sent him to the E. S. I. Hospital from the Factory as he had enteric fever. He was admitted to the E. S. I. Hospital on 8th June 1966 and remained there till 17th June 1966. He has produced a certificate issued by the E. S. I. Hospital and according to him he sent this certificate to the Management by registered post and wrote a letter as per Ext.W.18. He went with the certificate to the Factory on 25th June 1966. So the period of absence is covered by the E.S.I. Certificate as he was an in-patient in the hospital from 8th June 1966 to 17th June 1966 and he was ordered complete rest for one week from 17th June 1966. He had reported himself for duty after the period covered by the E.S.I. Certificate. There was, therefore, valid reason for his absence from duty and the Company has no right to presume that

he abandoned his work. A person covered by the E.S.I. Act cannot be said to be available for employment if he is unable to work on account of sickness which has been duly certified whether he is entitled to sickness benefit or not. Hence it seems to me that the dismissal of Venkatesh Murthy is not in accordance with law nor according to the Standing Orders where only the absence for more than 10 days will amount to misconduct. The absence after all is only for one week from 17th June 1966 to 24th June 1966 and this absence will not amount to misconduct. Even if it amounted to misconduct, he is not liable to be dismissed without proper enquiry which has not been done. It is, therefore, a colourable exercise of the powers and the order of dismissal has to be set aside.

19. In the result, my findings on the various issues are as follows :—

1. The reference made by the Government of Mysore is not premature and should not await the final recommendations of the said Engineering Wage Board.
2. The existing scheme of Dearness Allowance is not fair and reasonable when compared to those existing in other concerns of the region.
3. The I Party has made out a case for revision of Dearness Allowance.
4. The Settlement dated 9th December 1964 does not preclude the I Party from seeking revision of Dearness Allowance.
5. The Dearness Allowance cannot be fixed at Re. 0–25 p. per point of increase over 100 in the consumer price index but the workmen are entitled to increase in the Dearness Allowance which is fixed at Rs. 10 to those getting a basic salary up to Rs. 100 and Rs. 4 to those getting a basic salary of Rs. 100 to 200 and no increase for those getting more than 200.
6. Dismissal of Samuel was unfair and the enquiry held against him was opposed to the principles of natural justice.
7. The Company was not justified in removing the name of Venkatesh Murthy from the Muster Roll and he is entitled to be reinstated.
8. The dismissal of the two employees was unwarranted but it is not due to victimisation or unfair labour practice.

20. In view of my above findings, I make the following award for the reasons stated above :—

1. The workmen of the I Party are entitled to an increase in the Dearness Allowance payable to them under the Agreement of Rs. 10 to those drawing salary less than Rs. 100, Rs. 4 in the case of those drawing a salary from Rs. 100 to Rs. 200 and no increase in Dearness Allowance for those drawing more than 200 basic salary. They are entitled to this increase of Dearness Allowance from the date of the Reference.

2. Both Samuel and Venkatesh Murthy are entitled to be reinstated in service, but Samuel will be reinstated with continuity of service but without back wages as he has shown some negligence in his work by absenting himself from his place of work, while Venkatesh Murthy is entitled to be reinstated with back wages and continuity of service. There will be no order as to costs as each Party has succeeded in part.

V. C. RAMACHANDRAN,
Presiding Officer,
Additional Industrial
Tribunal, Bangalore.

ORDER

Bangalore dated 29th November 1967,

S. O. 2339—WHEREAS by State Government Order No. LMA 471 LLD 66, dated 28th October 1966, the Industrial Dispute between the Workmen and the Management of Guest, Keen Williams, Sankey Division, Bangalore, was referred to the Indu-trial Tribunal, Bangalore for adjudication;

AND WHEREAS this reference was transferred to Additional Industrial Tribunal, Bangalore by G. O. No. LMA 59 5LLE 66 dated 29th November 1966.

AND WHEREAS the Additional Industrial Tribunal, Bangalore has submitted to the State Government its award in respect of the said Industrial Dispute;

NOW, THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore are pleased to direct the publication of the said award as above, in the *Mysore Gazette.*

[No. LMA 471 LLD 66]

By Order and in the name of the Governor of Mysore,

G. G. PUROHIT, *Under Secy.*